

Comptroller General
of the United States

343610

Washington, D.C. 20548

Decision

Matter of: Network Systems Corporation

File: B-253675

Date: October 7, 1993

Harry R. Silver, Esq., Davis, Wright & Tremaine, for the protester.

Edward S. Christenbury, Esq., and Michael L. Wills, Esq., Tennessee Valley Authority, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A protest against allegedly improper evaluation of proposals for channel extenders under a procurement conducted by the Tennessee Valley Authority (TVA) is denied where protester's proposed configuration required the installation of software and awardee's did not and TVA reasonably determined that the awardee submitted a technically superior proposal and, based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical and price most advantageous to the government.

DECISION

Network Systems Corporation (NSC) protests the award of a contract to Computer Network Technology (CNT) under request for proposals (RFP) No. YC-93372F, issued by the Tennessee Valley Authority (TVA) for channel extenders and associated services for TVA's Knoxville, Tennessee, Data Center.¹ NSC essentially challenges the evaluation of its proposal.

We deny the protest.

By letters dated October 22, 1992, TVA requested six potential suppliers of channel extenders, including NSC and CNT, to participate in a technical presentation in response to TVA's plans to utilize channel extenders on its computer system for equipment in the Knoxville Data Center. Five of

¹The channel extenders permit the transfer of data from three computer systems in Chattanooga, Tennessee, to printers and local terminals in Knoxville, Tennessee.

the six vendors presented their products for review. The presentations were evaluated. NSC and CNT were considered to offer the best products. Specifically, NSC's system was considered very flexible with good technical features. However, it was viewed as less desirable than CNT's because its channel extenders required system software, and its parts and service facility was located further away from the Knoxville Data Center than CNT's.

On April 9, 1993, the RFP for channel extenders and associated services was issued to CNT and NSC. The RFP contained no description or definitions of the requirement but simply specified CNT equipment. By letter dated April 13, NSC objected to the TVA that the RFP did "not provide descriptive information sufficient enough to quote like capability, nor is there any information provided in Section C that describes the requirement in functional terms." TVA then amended the RFP to include a scope of work which listed nine requirements, one of which stated the following: "Proposed configuration shall not require software install or intervention, other than NETVIEW or system monitors." On that same day, NSC inquired whether each of the nine requirements was mandatory or desirable. In response, on April 16, TVA issued addendum No. 2 which amended the RFP to read as follows:

"TVA desires that the proposed configuration shall not require software install or intervention, other than NETVIEW or system monitors. (This requirement is desirable. The others in this Section C.2 are mandatory.)"

The RFP was again amended on April 20. The RFP, as amended, provided that proposals would be evaluated in two parts, technical and financial. The technical part was assigned 60 percent of the possible points and cost 40 percent. The RFP stated that the proposal with the lowest cost would receive the maximum number of points for cost, and all other proposals would be awarded a cost score based on the ratio of the lowest responsive proposal to the proposal being evaluated. The RFP further provided that in comparing proposals and in making awards, TVA may consider such factors as relative quality and adaptability of supplies or services, the offeror's financial responsibility, skill, experience, record of integrity in dealings, ability to furnish repairs and maintenance service, the time of delivery or performance offered, and any other element or factor in addition to that of the proposal price.

The RFP listed the following evaluation factors:

M.3 Evaluated Optional Features.

1. If proposed configuration requires software install or intervention, other than NETVIEW or system monitors, please clarify in detail. Describe operator interventions.
2. Maintenance and parts availability. Please provide type of maintenance and parts locations.
3. Remote diagnostic and analysis capability. Indicate if these functions are available and describe their functionality.
4. Delivery within 30 days from date of award.
5. Comdisco Disaster Recovery compatibility.

M.3.1 Total Quality Program/Management Organization.

M.3.2 Management/Organization.

In addition, the RFP provided that TVA could award a contract based on initial offers received without discussions; accordingly, each initial offer was to be submitted on the most favorable terms from a price and technical standpoint.

Proposals were received from NSC and CNT on May 4. By tele-fax communications on May 7, two RFP amendments were sent to both offerors. The first amendment modified the RFP to request the nearest location of service representatives and parts to be used to maintain the systems. The second modified the requirement from a four-channel to a six-channel system. The offerors were asked to respond to the first amendment by May 10. NSC was asked to respond to the second amendment by its "earliest convenience." CNT at all times proposed a six-channel system. NSC and CNT responded to the first amendment on May 10 and NSC responded to the second amendment on May 12.

After evaluation, CNT received the highest technical score. CNT's proposal was found technically superior to NSC's offer, primarily because CNT did not require additional software installation for its system and had a parts and services facility closer to the Knoxville data center. CNT was determined to be the most advantageous offeror based on its

initial offer and on May 14 was awarded a contract for \$274,400 which was approximately \$30,000 more than NSC's price. On June 4, after a debriefing, NSC filed this protest with our Office. The equipment has been delivered, installed, and tested.

NSC protests that the agency improperly failed to evaluate proposals in accordance with the RFP's evaluation factors for award. In this regard, NSC contends that the downgrading of its proposal because its maintenance facility was farther away from the installation site than CNT's was improper because the RFP did not mention that proposals would be graded on the basis of proximity of service facilities. NSC further argues that its proposal was severely downgraded because its proposed configuration required the installation of software when all evaluation criteria relating to installed software were expressly deleted from the RFP and replaced with a requirement to explain the operation of the system.²

Where detailed technical proposals are sought and technical evaluation criteria are used to enable a contracting activity to make comparative judgments about the relative merit of competing proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors. See Earth Resources Corp., B-248662.2 et al., Nov. 5, 1992, 92-2 CPD ¶ 323; Industrial Data Link Corp., B-248477.2, Sept. 14, 1992, 92-2 CPD ¶ 176.

Here, the RFP provided for a comparative evaluation of proposals, specifically stating that in this evaluation, the relative quality and adaptability of supplies or services and ability to furnish repairs and maintenance service would be considered. The RFP also asked offerors to provide information on their type of maintenance and parts locations, and as amended requested offerors to identify the nearest location of the service representatives and parts that would be used to maintain both the Chattanooga and Knoxville systems. We think these provisions reasonably placed offerors on notice that the agency intended to consider proximity of parts and service facilities in evaluating offerors' proposals. We therefore see nothing improper with TVA's consideration of location proximity in the evaluation.

²NSC also protested that its proposal was downgraded because it proposed delivery within 30 days, while CNT apparently promised delivery within a shorter period. The record shows that both NSC and CNT proposed delivery within 30 days, so consequently neither offeror received any points for providing a shorter delivery period.

We also find reasonable TVA's consideration of NSC's software installation requirement. As stated above, the evaluation criteria specifically required detailed information about offeror's use of software other than NETVIEW. Furthermore, TVA announced a preference for a solution that would not require the installation of software. First, the letter inviting offerors to participate in the technical presentation included an attachment that specifically stated that the desired configuration was one without software installation or intervention. Second, addendum No. 2 amended the solicitation to specifically provide that TVA desired a configuration that did not require new software installation or intervention. Consequently, NSC, having been involved with this procurement from the beginning, was aware of TVA's desire not to have new software. We think it was unreasonable in these circumstances for NSC to assume that TVA was precluded from considering whether an offer involved new software installation. In fact, since the RFP specifically identified TVA's desire for no new software, it was appropriate for TVA to take this into account when making a comparative evaluation of competing proposals. SACO Def., Inc., B-252066, May 20, 1993, 93-1 CPD ¶ 395.


The record shows, and the protester does not refute, that the awardee was technically superior to the protester on the basis of the two most important evaluated optional features. Given that the difference in price between the two offers was only approximately \$30,000, the agency, consistent with the evaluation factors, could reasonably conclude that award to CNT at a higher price was most advantageous to the government.

NSC also complains that TVA was aware, prior to submission of proposals on May 4, that its requirements had changed and that it would be necessary to acquire a six-channel system rather than a four-channel system. NSC argues that TVA should have amended the RFP before submission of proposals on May 4 to give all offerors an opportunity to revise their proposals.

We fail to see how the change from a four-channel system to a six-channel system after the submission of initial proposals resulted in prejudice to NSC. On May 7, NSC was advised of the change in the requirement and was requested to respond at its "earliest convenience." It was NSC's decision to respond to this request by May 12. The record shows that NSC was able to propose a six-channel system that was totally acceptable but considered less desirable than the awardee's for reasons unrelated to the expansion to a six-channel system. The protester's speculation notwithstanding, the record contains no evidence that CNT

was given advance notice of TVA's need for a six-channel extender.³

The protest is denied.


for James F. Hinchman
General Counsel

³NSC's allegation that TVA's award to CNT without discussions was improper because it did not "result in the lowest overall cost to the government" as required by Federal Acquisition Regulation § 15.610(a)(3) is untimely because it was not raised with this Office within 10 days of its receipt of the May 21 award notification. See 4 C.F.R. § 21.2(a)(2) (1993); American Coms. Co., B-248303, July 30, 1992, 92-2 CPD ¶ 63. NSC learned of this ground for protest when it received on May 21 written notification of the award to CNT at a higher price. NSC knew that the agency had not held discussions and did not raise this issue until it filed its comments to the agency report on July 27.